

LEADERS OF PHILADELPHIA BAR SAY TRANSIT LEASE GUARANTEES DIVIDENDS, CONTINUES EXCHANGES AND PROVIDES FOR PURCHASE OF P. R. T. STOCK

BLOW THAT KILLS THE LEASE

STATEMENT BY A. MERRITT TAYLOR

Erroneous and misleading interpretations of various important provisions in the Smith lease have jeopardized the interests of the city and its citizens; therefore, it became my duty to have the terms of the Smith lease clearly interpreted by competent authorities for the people of Philadelphia, who have relied upon me to fight for their transit program to a successful conclusion.

I am happy to say that they have fully and unqualifiedly sustained my views with relation to the questions involved. Their opinion is submitted herewith. September 21, 1917.

THE OPINION

PHILADELPHIA, Pa., Sept. 20, 1917.

Mr. A. Merritt Taylor, Philadelphia, Pennsylvania.

Dear Sir—You have submitted to us a copy of the proposed, so-called, "Smith Lease," between the city of Philadelphia and the Philadelphia Rapid Transit Company, and have asked our opinion as to the meaning of the lease on certain points. We beg to advise you as follows:

1. QUESTION. Does the lease insure that a cumulative dividend of 6 per cent shall be paid to the Transit Company from the revenue of the combined system?

ANSWER. The terms of the lease are such that the company is insured a dividend of 6 per cent, cumulative from the date of the lease.

An operating surplus is provided, which in the earlier years of the lease will amount to a large sum, which sum is pledged for the payment of full 6 per cent cumulative dividends from the date the lease goes into effect. In the order of payments out of gross revenue permitted under the lease, it is specifically provided that payments necessary to maintain the operating surplus fund shall not be made until after 6 per cent dividends have been paid in full from the date the lease becomes effective.

It is obvious, to go no further, that an operating surplus fund is a necessity in order to enable the system to be operated, and, as the existing surplus of the company, which on June 30, 1917, amounted to \$4,345,900.21, will be distributed to the stockholders, there will be no operating surplus fund except such as may be created and kept intact by payments out of gross revenue, which must follow, not precede, a payment of 6 per cent cumulative dividends.

Moreover, in case the revenue applicable to dividends is insufficient to pay 4 per cent for any six months, the city pledges itself to make "an earnest appeal to the Public Service Commission for an increase in fares, which may be by flat increase or charge for transfers or both," to produce "at least sufficient revenue" to pay 6 per cent dividends cumulative from the date of the taking effect of the lease. Finally, certain payments into the sinking fund, necessary to enable the property of the Transit Company to be purchased by the city at the maturity of the lease, cannot be made until after such dividends have been paid in full, and the city would not be entitled to any profits whatever from the operation of these lines until after said dividends have been paid.

2. QUESTION. Does the lease provide for the purchase by the city of the property and franchises of the Philadelphia Rapid Transit Company at a price equal to the par value of its stock then outstanding?

ANSWER. The lease provides for the purchase by the city from the Philadelphia Rapid Transit Company of all its property, leaseholds and franchises, at a price equal to the par value of its stock outstanding at the date of the purchase, plus accumulated dividends, as in the lease provided. The lease does not in terms require the city to make a purchase, but it provides for the making of large payments, including the city's entire share of profits of the unified system, into a sinking fund, which will certainly amount, before the date when the purchase could become effective, to a large sum of money. The funds so paid into the sinking fund, it is expressly provided in the lease, "shall be used and held for the purchase of the property, lease holds and franchises of the company," either under the existing contract of 1907 or under the provisions of the lease.

Inasmuch as this great sum will be absolutely tied up for this purpose indefinitely and permanently, it is apparent that the city could never use this money except for the purchase of the property of the Philadelphia Rapid Transit Company at the price specified. At the termination of the lease the city's property reverts to it, but it would not receive from the company equipment and appurtenances owned by the company and used in the operation of the city system which would be necessary for such operation. There is no provision in the lease by which the city can acquire this property without buying all the Transit Company's property, to the end that it may receive back again and operate its own lines separately from the lines of the Transit Company; nor is there any provision in the lease by which the funds accumulated, as aforesaid, in the sinking fund could be used for such purchase. It is, therefore, our opinion that under terms of this lease the city will be compelled to purchase the property of the Transit Company at the price stated at the time or times specified in the lease or under the contract of 1907.

3. QUESTION. Does the lease require that the city's full interest and sinking fund charges and the payments referred to in Questions 1 and 2 shall all be made out of gross revenue, or, in other words, out of car fares?

ANSWER. Yes.

4. QUESTION. Does the lease provide for the continuance of the present three-cent exchange ticket charge?

ANSWER. We have no hesitation in advising you that the lease does provide for the continuance of the present three-cent exchange ticket charge. These exchange tickets, it is expressly provided in the lease, shall continue in accordance with the present arrangement until after the subway delivery loop and the first individual operating section of the Broad street subway shall be placed in operation and until such exchanges shall thereafter have been abolished or modified by the Public Service Commission.

In conclusion, we desire to say that any arrangement that may be made between the city of Philadelphia and the Philadelphia Rapid Transit Company covering this important matter should and can be embodied in an instrument the full meaning of which can easily be gathered by an ordinarily intelligent citizen. As the lease now stands, we find that a number of its most important consequences result from the concurrent operation of widely separated paragraphs, whose relation to one another can be perceived only after expert study. This comment is especially applicable to provisions respecting rates of fare, respecting the distribution of the gross revenue of the unified system and respecting the powers of the board of supervising engineers created under Article XXXIV of the lease. The cumulative effect of various paragraphs is to confer upon this board wide supervisory powers which existing statutes would seem to vest in City Councils or in the Department of City Transit or in the Public Service Commission. We consider the provision for such a board as of doubtful legality and as likely to lead to disputes and litigation, the result of which it is impossible to foretell at this time.

(Signed) CHARLES L. McKEEHAN, PARKER S. WILLIAMS, T. R. WHITE, WILLIAM A. GLASGOW, JR., HENRY C. THOMPSON, JR., OWEN J. ROBERTS

BRITISH SMASH THROUGH LINES IN GREAT DRIVE

'Complete Success' Won Over Enemy, Field Marshal Announces

FEARFUL LOSSES INFLICTED ON FOE

Offensive East of Ypres Wins Ten Square Miles of Ground

COUNTER-ATTACKS FAIL

LONDON, Sept. 21.—"Complete success" was Field Marshal Haig's epitome today of the results to date of the great British drive across the Ypres-Menin road.

His official report declared the enemy's losses were very heavy. British casualties, he said, were light.

"Detailed reports confirm the completeness of our success," the British commander-in-chief asserted. "In the neighborhood of the tower and hamlets northeast of Langemark during the evening our local attacks cleaned up a number of strong points and completed the capture of objectives there."

"During the afternoon and evening considerable forces of the enemy counter-attacked, suffering unusually great casualties. The obstinacy of the enemy increased his losses without regaining any valuable ground. Our own losses were light."

"Clear light during the latter part of the day," Haig's report continued, "enabled us to obtain warning of impending attacks. Advancing Germans were destroyed in concentrated rifle, machine-gun and artillery fire."

"At night the enemy, exhausted by his previous efforts, did not counter-attack, and

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PLANS TO SWAY CONGRESS LAID BY BERNSTORFF

Former Ambassador's Message Revealing Plot Made Public

ASKED FOR \$50,000 "INFLUENCE" FUND

Germany's Diplomatic Intrigue—and Blunders

GERMANY, through the then Foreign Secretary Zimmermann, plotted to align Mexico and Japan in war against the United States.

She sought to influence the Congress of the United States against war by expending a sum up to \$500,000.

The Swedish Minister at Buenos Aires as a means of communicating Count Luxburg's insolent advice that all vessels be "apurlos versenkt."

She used the Swedish diplomat, Cronholm, at Mexico City, as her active messenger and, according to a letter in American possession, also as a direct spy.

She plotted, through her ally, Austria, for destruction of munition plants in the United States.

She tried to stir up a revolution in the Philippines by promising the Filipino white women in return for an uprising.

WASHINGTON, Sept. 21.—Former German Ambassador Count von Bernstorff was an active anti-American plotter while his nation and the United States were still friendly, and he asked the Berlin Foreign Office on January 22 for \$50,000 to influence Congress, "as on former occasions."

His activity was in the nature of influencing Congress through an unnamed organization, which, he informed his Government, could "perhaps prevent war."

The State Department made this fact public today in announcing the text of a message he forwarded on that date.

THE OFFICIAL STATEMENT The State Department's announcement said: "The Secretary of State issues the following from Ambassador Bernstorff to the Berlin Foreign Office, dated January 22, 1917:

"I request authority to pay out up to \$50,000 in order, as on former occasions, to influence Congress through the organization you know of, which can, perhaps, prevent war."

"I am beginning in the meantime to act accordingly."

"In the above circumstances a public official German declaration in favor of Ireland is highly desirable, in order to gain the support of Irish influence here."

The State Department indicated that it is convinced of the identity of the organization Bernstorff referred to, though there is sufficient doubt to prevent announcement.

The Department tended to dissipate the idea of any actual expenditure of the money on Congressmen direct. It was intimated that propaganda telegrams sent to Congress had their origin in German money.

Bernstorff may have sent his message with the aid of some neutral diplomat. Though it apparently reached Berlin it was probably intercepted and decoded.

The State Department said that even before

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MAYOR SMITH, ACCUSED IN MURDER PLOT, IS RELEASED UNDER \$10,000 BAIL BY COURT; GUNMEN IDENTIFIED BY NEW YORK POLICE

WARRANT FOR MAYOR SMITH

Commonwealth of Pennsylvania : ss. County of Philadelphia

ISADORE STERN, being duly sworn according to law, deposes and says that Thomas B. Smith, Isaac Deutsch, David Bennett, late of said county, and others to this affiant unknown, within two years last, past and within the jurisdiction of this county, did unlawfully, maliciously and wickedly combine, confederate and agree together to violate the Act of Assembly of this Commonwealth of February 15th, 1906, by causing, and procuring through themselves and others, officers and employees of the City of Philadelphia to take an active part in political management and political campaigns and use their office to influence political movements and the political action of other officers and other employees and to interfere with the conduct of an election to be held at said City of Philadelphia on the 19th day of September, 1917, and the preparation therefor, and in pursuance of said conspiracy to commit assault and battery, aggravated assault and battery and murder, which said conspiracy was performed and executed within the said City of Philadelphia and elsewhere within two years last past, contrary to the form of the Act of Assembly in such case made and provided and against the peace and dignity of the Commonwealth of Pennsylvania. (Signed) ISADORE STERN.

Sworn to and subscribed before me this 20th day of September, A. D. 1917. (Signed) THOMAS J. SHERMAN, Pro. Clerk of the Municipal Court.

(Seal)

BASEBALL SCORES

CLEVELAND . . . 0 0 0 0 0 0 0 0 — ATHLETICS . . . 0 0 0 1 0 2 0 — Morton and Billings; Schauer and McAvoy. O'Loughlin and Moriarty

PHILLIES . . . 2 0 0 — CHICAGO . . . 0 0 2 — Alexander and Killefer; Douglas and Dilhoefer. O'Day and Harrison.

NATIONAL LEAGUE

NEW YORK 1 0 1 0 0 — PITTSBURGH 0 0 0 0 0 — Benton and McCarty; Steele and Schmidt. BOSTON — ST. LOUIS —

POSTPONED—RAIN

AMERICAN LEAGUE

CHICAGO 0 0 0 1 0 0 — BOSTON 0 0 0 0 0 1 — Faber and Schalk; Leonard and Thomas. DETROIT 4 0 0 0 — WASHINGTON 0 0 0 0 — Boland and Stange; Harper and Ainsmith. ST. LOUIS 0 0 0 0 0 1 — NEW YORK 0 0 0 0 2 0 3 — Sotheron and Severoid; McGriffe and Roul.

FOOTBALL SCORES

PENN CHARTER 0 7 — CHELTENHAM HIGH SCHOOL 0 0 —

RIGID CENSORSHIP IN TRADING WITH ENEMY ACT

WASHINGTON, Sept. 21.—Carrying a drastic letter, cable and wireless censorship amendment, the trading with the enemy act will be adopted in the House today or tomorrow and the Senate next week. Chairman Fletcher, of the Senate Commerce Committee, confirmed reports that information of American troops transports, merchantmen and military secrets were conveyed to Germany by uncensored messages to neutral countries.

I. W. W. DRIVEN OUT OF DAKOTA TOWN

FARGO, N. D., Sept. 21.—Forty-six I. W. W. were driven out of Sabin, N. D., today by police and county officials, assisted by the Moorehead home guard. The men were escorted southward along the railroad track after each had been searched and an I. W. W. card found in his possession. One man carried a revolver.

POU FAVORS SPECIAL SUFFRAGE COMMITTEE

WASHINGTON, Sept. 21.—Representative POU, North Carolina, chairman of the House Rules Committee, announced this afternoon he favored a special suffrage committee and will bring in a rule establishing one on Monday. Suffragists have fought for this recognition in several sessions and regard POU's change of attitude a victory.

11 1/2 BILLION WAR BILL FINALLY PASSED

WASHINGTON, Sept. 21.—With scarcely any discussion, the House this afternoon adopted the conference report on the \$11,538,000,000 bond and certificate bill. The bill as adopted changes the amount to be spent in marketing the bonds to 1-5 or 1 per cent over their value. The amount to be spent in marketing the certificates is 1-10 of 1 per cent. The Senate already had adopted the conference report in its present form. The bill now goes to the President.

KAISER HAS GONE TO SOFIA

ZURICH, Sept. 21.—The Kaiser has gone to Sofia, capital of Bulgaria, said a telegram from Vienna today. It did not explain the Kaiser's mission.

Isaac Deutsch, Fifth Ward Vore Leader, and Lieutenant Bennett Also Held

All Are Permitted to Sign Their Own Bonds and Are Given Liberty

One Prisoner Offers to Confess, but Becomes Clamlike When Refused Immunity

Thomas B. Smith, Mayor of Philadelphia, was held in \$10,000 bail today, accused of conspiracy to commit murder.

At the same time Common Councilman Isaac Deutsch, Vore-Smith leader in the Fifth Ward, and Lieutenant David Bennett, Vore-Smith police commander at the Third and De Lanoy streets station, were held under like bail on similar charges, all growing out of the political murder of Acting Detective George A. Eppley by imported New York gunmen in Wednesday's riotous primary election in the "Bloody Fifth."

Mayor Smith was permitted to sign his own bail bond. So were his alleged accomplices.

The formality which took place in the Municipal Court marked the first time in the history of Philadelphia that its Chief Executive has been arrested on a criminal charge. It will be followed by formal arraignment of the Mayor and his political followers next Tuesday before President Judge Brown, of the Municipal Court, who notified the Mayor by letter that he was wanted today.

District Attorney Samuel P. Rotan, announcing "progress" in his probe after the "man higher up," this afternoon declared that he had "positive evidence that the work of the gunmen was due to a definite arrangement."

The Coroner's investigation into the political murder got under way today.

GUNMEN IDENTIFIED

The two alleged murderers of Eppley, now under arrest, have been identified through Bertillon measurements in New York, according to word sent to Captain of Detectives Tate by Inspector Faurel, of the New York Detective Bureau, over the long-distance telephone today. Jack Mascia, who fired the shot, is Samuel Scueliga, and John Costello is Henry de Inrao, both well-known New York gunmen, according to Inspector Faurel.

"THUG OFFERS TO CONFESS" The identification is believed to be a link in the chain leading to the "man higher up." The two prisoners, under instructions from their counsel, have consistently refused to tell who they are.

De Inrao, alias Costello, offered to confess to Captain Tate this morning, but when not assured immunity he became clamlike.

Isaac Deutsch was the first of the three alleged conspirators to appear in room 650, City Hall, to sign his bail bond. He appeared at 11:04 o'clock and asked Thomas J. Sherman, the clerk, for the bond, which he signed.

"Are there any costs?" he asked. "One dollar and a quarter," replied Sherman.

Deutsch gave him a \$2 bill. "That will be all right," he smiled, starting to walk away.

"No," said Sherman. "The costs are \$1.25." He handed Deutsch the bill and Deutsch then gave him \$1.25 in change.

MAYOR SMITH APPEARS

At 11:05 the Mayor appeared, with his bodyguard, George Bens, and former Captain of Detectives Sherrin. He shook hands with Deutsch.

"Will you let me see the affidavit?" he asked Sherman. Sherman handed him a copy of it.

"Why," exclaimed the Mayor, reading the charges, "this is signed by Isadore Stern. The letter that I received from Judge Brown said that the affidavit was sworn to by James A. Carey. Is this the affidavit and warrant that I—"

CAREY TOO ILL TO SIGN "Yes, that is the affidavit," said Sherman, explaining that Carey was too ill to sign it and that Stern had signed it.

"It's all right," said the Mayor. "I just noticed the discrepancy." Where do I sign the bond?

The Mayor then affixed his signature and left the room, going through the lane opened for him by detectives, who pushed aside the jam of politicians, lawyers, city officials and others of the curious that had crowded the chamber.

No charge was made against the Mayor (Continued on Page Eight, Column Five)

THE WEATHER

FORECAST For Philadelphia and vicinity—Partly cloudy and somewhat cooler tonight and Saturday; gentle westerly winds.

LENGTH OF DAY Sun rises . . . 5:44 a. m. Sun sets . . . 6:21 p. m. DELAWARE RIVER TIDE CHANGES CHESTNUT STREET High water . . . 12:28 p. m. High water . . . 4:28 p. m. Low water . . . 11:59 a. m. Low water . . . 12:31 p. m. TEMPERATURE AT EACH HOUR

A. Merritt Taylor, at Councils' Hearing, Explodes Legal Bomb Under Advocates of Smith - Mitten Proposal

Defects in the Instrument, Already Pointed Out, Verified by the Joint Opinion of City's Most Eminent Counsel

Councils' Joint Finance and Street Railways Committees met this afternoon in City Hall to hear objections to the Smith-Mitten proposed transit lease. The great outstanding feature of the meeting was furnished by A. Merritt Taylor, ex-Director of the Transit Department and opponent of the Smith lease. Mr. Taylor made public a written opinion furnished him by six of the city's most eminent lawyers in which they jointly and severally brand the Smith-Mitten proposal as unfair and unjust to the city, fully sustaining all the contentions made against it by Mr. Taylor. The lawyers who gave this opinion are:

CHARLES L. McKEEHAN, PARKER S. WILLIAMS, THOMAS RAEBURN WHITE, WILLIAM A. GLASGOW, JR., HENRY C. THOMPSON, JR., OWEN J. ROBERTS.

The opinion, together with an introductory statement by Mr. Taylor, is printed in full in a parallel column.

DIVIDEND IS GUARANTEED

These lawyers settle the moot point as to whether the terms of the Smith lease insure that a cumulative dividend of 6 per cent shall be paid to the Transit Company from the revenues of the combined city-owned P. R. T.-owned systems. They find that this cumulative dividend is insured under the Smith lease from the date of the signing of the instrument.

They find that it continues eight-cent exchanges and provides for the purchase by the city of all the P. R. T. property, including leaseholds and franchises, at a price equal to the par value of its stock outstanding at the date of purchase, plus accumulated dividends.

The opinion holds that the Smith lease requires that the city's full revenue interest and sinking fund charges shall be made out of gross revenues; in other words, out of car fares. This would mean higher car-fare rates than the existing five-cent charge.

CONDEMN PUZZLING CONSTRUCTION

They find that the Smith lease is involved and understandable only after expert study. They declare that any arrangement between the city and the P. R. T. Company should and can be embodied in an instrument the full meaning of which can be gathered by an ordinarily intelligent citizen.

TAYLOR APPEALS TO CITY

Following this surprise bomb, the explosion of which quite swept the proponents of the Smith lease off their feet, Mr. Taylor presented to William Draper Lewis, special transit advisor to Mayor Smith, a series of questions containing his objections to the Smith lease. Mr. Taylor accompanied this statement with a statement to the public at large, which reads:

"City Councils have under consideration the so-called Smith lease, which—by obscure provisions contained therein—disregards the cardinal principles upon which the citizens of Philadelphia have based their program for transit development. Mayor Smith publicly stands sponsor for this lease. The Smith lease would:

(1) Continue the illegally discriminatory three-cent exchange tickets, and make necessary inordinately high fares.

(2) Retard and curtail, or destroy, the city's adopted comprehensive plan of transit development.

(3) Force street railway passengers to pay the Philadelphia Rapid Transit Company stockholders a guaranteed 6 per cent cumulative dividend, vast additional profits, and ultimately \$50 per share for their stock.

(4) Force street railway passengers to repay to the city the entire cost of constructing its high-speed system, in addition to interest thereon pending such payment.

(5) Place the destiny of Philadelphia's transit development in the hands of a board of three members, with autocratic powers to be nominated by the Mayor and the Philadelphia Rapid Transit Company. The Smith lease must be scotched, or the city and the street railway passengers,

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The Continuation of the Story "Germany, the Next Republic?" by Carl W. Ackerman is printed on Page 20